

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 165 be amended to read as follows:

- 1 Page 2, between lines 4 and 5, begin a new paragraph and insert:
- 2 "SECTION 2. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2008]:
- 5 **Chapter 31. Community Investment Tax Credit**
- 6 **Sec. 1. As used in this chapter, "affiliate" means the following:**
- 7 (1) A parent entity that owns a controlling interest in a
- 8 federally qualified community development entity.
- 9 (2) Any subsidiary of a parent entity described in subdivision
- 10 (1) that qualifies as a federally qualified community
- 11 development entity.
- 12 **Sec. 2. As used in this chapter, "applicable percentage" means**
- 13 **five percent (5%) for each credit allowance date.**
- 14 **Sec. 3. As used in this chapter, "certified development entity"**
- 15 **refers to a federally qualified community development entity that**
- 16 **is certified by the corporation as a certified development entity**
- 17 **under section 24 of this chapter.**
- 18 **Sec. 4. As used in this chapter, "corporation" refers to the**
- 19 **Indiana economic development corporation.**
- 20 **Sec. 5. As used in this chapter, "credit allowance date" means:**
- 21 (1) the date the corporation certifies a federally qualified
- 22 equity investment as a state credit; and
- 23 (2) the anniversary of the date described in subdivision (1) in
- 24 each calendar year remaining in the certified development

1 entity's federal credit period.

2 **Sec. 6.** As used in this chapter, "department" refers to the
3 department of state revenue.

4 **Sec. 7.** As used in this chapter, "eligible business" means a
5 business that:

- 6 (1) qualifies as a low income community business; and
- 7 (2) is located in Indiana.

8 **Sec. 8.** As used in this chapter, "federal credit" refers to a new
9 markets tax credit granted under Section 45D of the Internal
10 Revenue Code against federal income tax liability.

11 **Sec. 9.** As used in this chapter, "federally qualified community
12 development entity" refers to a qualified community development
13 entity (as defined in Section 45D of the Internal Revenue Code)
14 that has an allocation of federal credits.

15 **Sec. 10.** As used in this chapter, "federally qualified equity
16 investment" refers to a qualified equity investment (as defined in
17 Section 45D of the Internal Revenue Code) that qualifies a federal
18 taxpayer for a federal credit.

19 **Sec. 11.** As used in this chapter, "holder", with respect to a
20 credit allowance date, refers to one (1) of the following:

- 21 (1) The taxpayer or pass through entity that makes the
- 22 original state certified investment, if the taxpayer or pass
- 23 through entity owns the state certified investment on a credit
- 24 allowance date.
- 25 (2) A subsequent taxpayer or pass through entity that owns
- 26 the state certified investment on a credit allowance date.

27 **Sec. 12.** As used in this chapter, "low income community
28 business" refers to a business that qualifies as a qualified active
29 low-income community business (as defined in Section 45D of the
30 Internal Revenue Code).

31 **Sec. 13.** As used in this chapter, "pass through entity" means a:

- 32 (1) corporation that is exempt from the adjusted gross income
- 33 tax under IC 6-3-2-2.8(2);
- 34 (2) partnership;
- 35 (3) trust;
- 36 (4) limited liability company; or
- 37 (5) limited liability partnership;

38 that is not subject to state tax liability.

39 **Sec. 14.** As used in this chapter, "reinvestment in low income
40 communities in Indiana" refers to the use of the assets of a
41 federally qualified community development entity for:

- 42 (1) a capital or an equity investment or loan to an eligible
- 43 business;
- 44 (2) an equity investment in or a loan to a federally qualified
- 45 community development entity that is located in Indiana;
- 46 (3) the delivery of financial counseling or other services to a
- 47 business in or resident of Indiana; or

(4) a purchase from another federally qualified community development entity of loans that are made to an eligible business;

that qualifies as a qualified low-income community investment (as defined in Section 45D of the Internal Revenue Code).

Sec. 15. As used in this chapter, "state certified investment" refers to a federally qualified equity investment that is certified by the corporation as eligible for a state credit.

Sec. 16. As used in this chapter, "state credit" refers to a credit granted under this chapter against state tax liability.

Sec. 17. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 18. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has state tax liability.

Sec. 19. Subject to this chapter, a holder that:

- (1) holds a state certified investment on a credit allowance date; and
- (2) does not receive another credit under any other law against state tax liability for the same state certified investment;

is entitled to a community investment tax credit in a taxable year in which a credit allowance date occurs against the holder's state tax liability for the taxable year.

Sec. 20. The amount of a state credit in a taxable year is equal to the amount determined under STEP TWO of the following formula:

STEP ONE: Determine the amount of the state certified investment that is held by a taxpayer on the credit allowance date in the taxable year.

STEP TWO: Multiply the STEP ONE amount by the applicable percentage for the credit allowance date.

Sec. 21. (a) If:

- (1) a pass through entity does not have state tax liability against which the state credit may be applied; and
- (2) the pass through entity would be eligible for a state credit if the pass through entity were a taxpayer;

a shareholder, partner, or member of the pass through entity is entitled to a state credit under this chapter.

(b) Subject to this chapter, the amount of the state credit to which a shareholder, partner, or member of a pass through entity

is entitled is the result determined under STEP TWO of the following formula:

STEP ONE: Determine the amount of a state credit for the pass through entity for the taxable year as if the pass through entity were a taxpayer with state tax liability at least equal to the amount of the credit.

STEP TWO: Determine the STEP ONE result multiplied by the percentage of the pass through entity's allocable share of federal credits to which the shareholder, partner, or member is entitled, as determined for federal income tax purposes.

Sec. 22. (a) If the amount of a state credit for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to not more than three (3) subsequent taxable years. The amount of the state credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a state credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of an unused state credit.

Sec. 23. To apply a state credit against the taxpayer's state tax liability, a taxpayer must claim the state credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. A taxpayer claiming a state credit shall submit to the department a copy of the certification letter issued by the corporation under section 25 of this chapter for the state certified investment that entitles the taxpayer to a state credit. In addition, the taxpayer shall submit to the department any additional information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the state credit.

Sec. 24. (a) The corporation shall establish a program to certify federally qualified community investment entities as certified development entities.

(b) An applicant must apply to the corporation for certification in the manner and on the certified development entity application form prescribed by the corporation.

(c) The corporation shall certify an applicant as a certified development entity only if the:

(1) applicant is a federally qualified community development entity;

(2) applicant and its affiliates by agreement with the corporation commit to continue to loan to or otherwise reinvest in eligible businesses for a period of at least seven (7) years concurrent with the federal credit period; and

(3) agreement with the corporation commits to invest at least eighty percent (80%) of the applicant's aggregate gross assets (including reserves) in eligible businesses.

1 **Sec. 25. (a)** The corporation shall establish a program to certify
 2 federally qualified equity investments as state certified
 3 investments.

4 **(b)** The corporation may certify a federally qualified equity
 5 investment as a state certified investment only if:

6 **(1)** a certified development entity designates the federally
 7 qualified equity investment for a state credit in a manner and
 8 on the designation form prescribed by the president of the
 9 corporation; and

10 **(2)** the certified development entity that designates the
 11 qualified equity investment for a state credit and its affiliates
 12 are in compliance with the agreements entered into by the
 13 certified development entity and its affiliates under section 24
 14 of this chapter.

15 **(c)** The certification of a federally qualified equity investment
 16 under this section applies only to credit allowance dates that occur
 17 after the certification is made by the corporation.

18 **(d)** The corporation shall issue a letter to the certified
 19 development entity indicating whether the corporation certifies the
 20 federally qualified equity investment as a state certified
 21 investment.

22 **Sec. 26. (a)** An action by the federal government under Section
 23 45D of the Internal Revenue Code to disallow or recapture a
 24 federal credit for a qualified equity investment terminates the state
 25 credit only to the extent that the corporation disallows or
 26 recaptures the state credit under this section.

27 **(b)** A holder of a state certified investment shall notify the
 28 corporation if the holder's federal credit for the state certified
 29 investment is disallowed or recaptured.

30 **(c)** If the federal credit granted for a state certified investment
 31 is disallowed or recaptured, the corporation may:

32 **(1)** disallow the use of a part of the related unused state
 33 credit;

34 **(2)** recapture a part of the related state credit that has been
 35 applied to the state tax liability of a taxpayer; or

36 **(3)** both disallow under subdivision (1) and recapture under
 37 subdivision (2) the state credit.

38 The maximum percentage of the state credit that may be
 39 disallowed and recaptured under this section is the percentage of
 40 the total federal credit that is disallowed or recaptured under
 41 Section 45D of the Internal Revenue Code.

42 **(d)** The corporation shall submit a copy of the corporation's
 43 determination under this section to the department.

44 **Sec. 27. (a)** Before April 1 each year:

45 **(1)** after the initial year that a federally qualified community
 46 development entity is certified as a certified development
 47 entity; and

(2) through the seventh year after the last credit allowance date for the certified development entity's last state certified investment;

the certified development entity shall submit a report to the corporation on the certified development entity's state credit program under this chapter.

(b) The report required by this section is the annual report of the certified development entity for that year that is filed for federal reporting purposes with the community development financial institutions fund. The corporation may require additional information in its discretion, including the following:

(1) Information on the number and amount of state certified investments and federally qualified equity investments made by the entity in Indiana.

(2) A description of each eligible business receiving an investment attributable to a state certified investment.

(3) An update on the financial status of the eligible businesses.

(4) An update on new jobs, increasing wages, total investment, and revenue impact derived from the state certified investment.

(5) The sum of the state credits designated by the certified development entity under this chapter.

(c) The corporation shall submit a copy of the report required by this section to the executive director of the legislative services agency. The report must be in an electronic format under IC 5-14-6.

Sec. 28. Before November 1 in each state fiscal year beginning in an odd-numbered year, the corporation shall provide an evaluation of the state credit program. The evaluation must include an assessment of the:

(1) effectiveness of each certified development entity that receives a state certified investment in creating new jobs and increasing wages in Indiana; and

(2) revenue impact of the certified development entity's state credit program.

The evaluation may include a review of the practices and experiences of other states with similar programs or other similar federal programs. The corporation shall submit the evaluation to the governor and the executive director of the legislative services agency. The report submitted to the executive director of the legislative services agency must be in an electronic format under IC 5-14-6.

Sec. 29. The corporation may adopt rules under IC 4-22-2 to carry out the purposes of this chapter, including rules to do the following:

(1) Facilitate the transfer of state credits earned under this chapter.

- 1 **(2) Certify an investment for a state credit before the**
2 **investment has received final approval for a federal credit**
3 **subject to the condition that the state credit is disallowed if**
4 **the federal credit is not granted."**
5 Page 2, after line 6, begin a new paragraph and insert:
6 "SECTION 4. [EFFECTIVE JANUARY 1, 2008] **(a) The**
7 **definitions in IC 6-3.1-31, as added by this act, apply throughout**
8 **this SECTION.**
9 **(b) IC 6-3.1-31, as added by this act, applies only to:**
10 **(1) federally qualified equity investments initially made; and**
11 **(2) taxable years beginning;**
12 **after December 31, 2007."**
13 Renumber all SECTIONS consecutively.
 (Reference is to ESB 165 as printed March 16, 2007.)

Representative Crawford